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Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Policy of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on reprisals in relation to its visiting mandate*

* Adopted by the Subcommittee at its twenty-fifth session (16-20 February 2015).

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I. General principles

1. The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment frequently comes across the issue of reprisals in the course of its work, both during or after its visits. For the purpose of the present policy, the term "reprisals" includes those acts or omissions attributable to authorities or officials of a State party who carry out, permit or tolerate "any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false" (article 15 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment).

2. The Subcommittee recalls that article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides for the protection of victims, complainants and witnesses of acts of torture against all ill-treatment or intimidation as a consequence of any information provided.

3. The Subcommittee is concerned with ensuring that, when carrying out its functions under the Optional Protocol, the situation of persons with whom it comes into contact is not prejudiced. Where this is not the case, the preventative mandate of the Subcommittee, including the basic imperative to "do no harm", is put at risk. As the Secretary-General said in his statement at the high-level panel discussion on reprisals, held in New York in 2011, "the United Nations could not do its invaluable work for human rights without those who cooperate with us".

4. The Subcommittee recalls that States parties have a primary responsibility to ensure that article 15 of the Optional Protocol is upheld. States need to ensure that all alleged acts of reprisals and intimidation are promptly, impartially and effectively investigated, that those responsible are brought to justice and that victims are provided with appropriate remedies.

5. Through its proactive policy, the Subcommittee asserts its uncompromising stance against reprisals and its unwavering commitment to prevent them. This includes an examination of the systemic causes of reprisals. The policy is taken into account during all Subcommittee activities and, in particular, while preparing for, during the course of or after a visit.

6. All Subcommittee working practices, in particular its interviews, reflect the necessity of preventing reprisals, in accordance with the present policy.

II. Operational practice

7. Prior to conducting a visit, in pursuance of the present policy, the Subcommittee implements the following measures:

(a) At the same time as the Subcommittee notifies the States parties of its programme (art. 13 (2) of the Optional Protocol), it shall also communicate to them the present policy document. The States parties are requested to bring the policy to the attention of all those with whom the Subcommittee may come into contact during the course of or after its visit;

(b) During the preparations for its visit or mission, the Subcommittee will examine all available information from relevant sources in relation to the occurrence of reprisals in the country to be visited;

(c) The Subcommittee delegation will appoint one of its members to be its focal point on reprisals;

(d) If the issue of potential reprisals becomes a matter of concern, the Subcommittee may write to the State party, or request a meeting with the State party's Permanent Mission to the United Nations in Geneva, or contact the State party in any other appropriate manner, in order to alert it to the Subcommittee's concern;

(e) The Subcommittee will prepare a short information sheet on reprisals, for distribution.

8. During a visit, if the Subcommittee becomes aware of the occurrence or risk of occurrence of reprisals, it will take all appropriate measures, which may include:

(a) Bringing the concern to the immediate attention of the appropriate government authorities;

(b) Raising the issue with the officials in charge of facilities that hold persons who are deprived of their liberty;

(c) Returning to facilities previously visited;

(d) At the conclusion of the visit, reiterating its concerns in the final debriefing with the authorities;

(e) Requesting that the national preventive mechanism conduct follow-up visits to the places visited by the Subcommittee;

(f) Requesting that the relevant institutions, including civil society organizations, governmental bodies and specialized non-governmental organizations, conduct follow-up visits to the places visited by the Subcommittee;

(g) Raising concerns through diplomatic channels with States parties to the Optional Protocol;

(h) Requesting the support of all the relevant bodies of the United Nations and other international, regional and national organizations in addressing reprisals in those situations where they can be of assistance, including by examining the relevant information they may have concerning reprisals;

(i) Highlighting the risk of reprisals or sanctions through appropriate channels, including the local and international media;

(j) In the event that a State party does not cooperate fully to the extent that the Subcommittee considers the success of its mission to be in jeopardy, potentially suspending its visit or taking other measures, in accordance with its statement on the obligations of States parties to facilitate the visits of the Subcommittee (CAT/OP/24/1).

9. Following the visit:

(a) The focal point will ensure that any additional information that is discovered concerning reprisals is reflected in the visit report;

(b) The focal point will make recommendations to the Head of Delegation and the Bureau of the Subcommittee on any further measures that may need to be taken;

(c) The Subcommittee may choose to use all other measures, as provided for in article 16 (4) of the Optional Protocol, concerning the lack of cooperation of the State party.

III. Complementary measures

10. The Subcommittee will seek the cooperation of all the relevant bodies of the United Nations, in particular the Committee against Torture, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and other international, regional and national organizations, to ensure that reprisals are prevented and eradicated. For that purpose, the Subcommittee will:

(a) Appoint one of its members to be a focal point on reprisals, to oversee the implementation of the present policy, coordinate the activities of the Subcommittee relating to reprisals and liaise with the relevant national, regional and international bodies, as appropriate;

(b) Discuss issues concerning reprisals with States parties to the Optional Protocol collectively and bilaterally, on a regular basis;

(c) Agree upon procedures to be followed by the national preventive mechanisms concerning responses to reprisals, taking into account the particular country needs.

11. The Subcommittee will keep the present policy constantly under review.